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July 15, 1996

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Joint Comments in IB Docket No. 96-111

Dear Mr. Caton:

Transmitted herewith for filing on behalf of Newcomb Communications, Inc. ("Newcomb") and Mobile Datacom Corporation ("Mobile Datacom") are an original plus nine copies of their Joint Comments in the above-referenced docket. If there are any questions regarding this please contact the undersigned counsel.

Sincerely,

Terri B. Natoli

Enclosures

No. of Copies rec'd 0+1

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States	IB Docket No. 96-111
and Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations	CC Docket No. 93-23 RM-7931
and COMMUNICATIONS SATELLITE CORPORATION Request for Waiver of Section 25.131(j)(1) of the Commission's Rules As It Applies to Services Provided via the Intelsat K Satellite	File No. ISP-92-007

JOINT COMMENTS

NEWCOMB COMMUNICATIONS, INC. and
MOBILE DATACOM CORPORATION

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Dated: July 15, 1996

Summary

Newcomb Communications, Inc. ("Newcomb") and Mobile Datacom Corporation ("Mobile Datacom") are radio-determination satellite service ("RDSS") licensees and operators. They provide *inter alia* critical safety-related data communications services for numerous U.S. users. Their systems currently operate aboard geostationary fixed satellites. Because the life of the satellites which the Newcomb and Mobile Datacom systems use is finite and because of other conditions imposed on their authorizations, Newcomb and Mobile Datacom are exploring alternative space segment capacity options for their follow-on systems. The DISCO II proceeding is an important vehicle for ensuring that the requisite space segment capacity is available to Newcomb and Mobile Datacom as well as other U.S. users who may need to access space segment capacity licensed by another country to provide vital services demanded by the U.S. public. To that end, Newcomb and Mobile Datacom support the Commission's efforts to adopt a comprehensive regulatory framework for the use of non-U.S. space segment that will permit the widest possible range of service options To achieve this goal, however, Newcomb and Mobile Datacom believe that the Commission must adopt an additional test for use in evaluating applications for non-U.S. satellite capacity use in the United States. This additional test, *i.e.*, an "Insufficient U.S. capacity" test would be used in lieu of an "Eco-Sat" test in those situations where U.S. licensed space segment capacity was insufficient, unavailable, or technically or economically impractical, to meet the needs of the applicant. Adoption of this additional test would further the Commission's goals of ensuring the greatest availability of satellite services for the U.S. public, but would not adversely impact U.S. licensees.

In addition, in evaluating applications for non-U.S. satellite capacity, Newcomb and Mobile Datacom believe the Commission's proposal to consider all MSS services in one category is too broad based and does not take into consideration the distinct differences between certain types of MSS services. For example, the low-data-rate packetized non-voice, non-switched data services provided by Newcomb and Mobile Datacom may not raise the type of concerns in other countries as global voice MSS services provided by U.S. licensees which are interconnected with another country's public switched network. For that reason, effective competitive opportunities in other countries may exist sooner for the types of "MSS" services provided by Newcomb and Mobilecom than for other types of interconnected MSS services. If these services are lumped together into a general MSS service category, however, authority to use non-U.S. space segment may be unnecessarily forestalled while awaiting satisfaction of the Eco-Sat test for other types of MSS services. Newcomb and Mobile Datacom therefore request that Commission subdivide the MSS service category into one category for services like RDSS packet data messaging and position location services which do not interconnect with the public switched voice network and one category for those MSS services contemplating global interconnected switched voice and data services.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States	IB Docket No. 96-111
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JOINT COMMENTS

Newcomb Communications, Inc. ("Newcomb") and Mobile Datacom Corporation ("Mobile Datacom"), by counsel, hereby jointly submit their comments in the above-captioned proceeding[1] and respectfully state as follows:

[1]Hereinafter referred to as the "DISCO II NPRM".

I. Background and Introduction

Newcomb[2] and Mobile Datacom[3] are radio determination satellite service licensees and operators of data messaging and position determination systems in the 1610-1626.5 MHz frequency band. Both the Newcomb and Mobile Datacom systems are non-switched, non-voice mobile packetized data communications systems using spread spectrum Code Division Multiple Access ("CDMA") technology.

Newcomb's and Mobile Datacom's systems currently operate on an L-band transponder aboard a geostationary (GSO) fixed-satellite (FSS). The inbound portion of the system consists of mobile terminals that transmit signals via L-Band frequencies to a GSO FSS satellite. The satellite converts the signal to Ku-Band (11.7-12.2 GHz) and downlinks to a gateway control center, from whence the signals are sent to the customers' facility via terrestrial links. Return (outbound) signals are routed terrestrially between the customers' facility and the gateway control center, and then on to a licensed C-Band uplink facility for uplinking via FSS C-Band frequencies (6 GHz) to an authorized U.S. GSO FSS satellite. The satellite then downlinks the messages via C-Band frequencies (3700-4200 MHz) to mobile terminals. The Newcomb and Mobile Datacom systems, which have been in operation since 1992[4] and 1993,[5] respectively,

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[2]Newcomb Communications, Inc., *Order and Authorization*, File No. 1251-DSE-MP/L-95, DA 96-124 released February 5, 1996; Newcomb Communications, Inc., (hereinafter "Newcomb Mod Order"), 8 FCC Rcd 3631 (1993).

[3]Mobile Datacom Corporation, *Order and Authorization*, 10 FCC Rcd 4552 (1995) ("hereinafter "MDC Order").

[4]See, Letter from Chief, Domestic Facilities Division to Paul F. Newcomb (March 6, 1992) granting Newcomb's initial Special Temporary Authorization ("STA") to begin operation.

[5]*See*, Letter from Chief, Domestic Facilities Division, to Peter A. Rohrbach (August 19, 1993) granting MDC's initial STA to begin operation.

provide *inter alia* critical safety-of-life and distress communications which mitigate the risk of dangerous, but essential operations, to various types of users. Specifically, these systems have been providing vital safety-related communications for numerous federal government agencies, military, state and local law enforcement groups, and private and commercial entities for both aeronautical and maritime applications in conjunction with flight safety, search and rescue, and public safety and surveillance applications. Demand for these critical services provided by Newcomb and Mobile Datacom continues to grow. In spite of this, both the Newcomb and Mobile Datacom system authorizations are "interim" in nature, subject to termination upon the launch of an authorized Low Earth Orbit ("LEO") Mobile Satellite System ("MSS")[6] unless Newcomb and Mobile Datacom can conclusively demonstrate that continued operations using their current GSO FSS space segment capacity will not interfere with the authorized LEO MSS systems.[7] As a result of the interim nature of their current authorizations and because the in-orbit life of the GSO FSS space stations used by Newcomb and Mobile Datacom is finite, Newcomb and Mobile Datacom have been exploring all conceivable sources of space segment capacity to most-effectively meet the needs of their second generation systems. These sources include licensed US LEO and GSO MSS satellite systems as well as satellite systems of other countries. Even if Newcomb and Mobile Datacom are permitted to continue operating on their current space segment upon demonstration of non-interference with the authorized LEO's, eventually the transition to follow-on space segment capacity will be necessary. To that end,

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[6]*See, e.g., Motorola Satellite Communications, Inc.*, 10 FCC Rcd 2268 (1995); *Loral/QUALCOMM Partnership, L.P.*, 10 FCC Rcd 2233 (1995) and *TRW, Inc.*, 10 FCC Rcd 1263 (1995).

[7]*See, e.g., Newcomb Mod Order* at para 10; *MDC Order* at para 10.

Newcomb and Mobile Datacom share a vital interest in the Commission's proposals to adopt a comprehensive legal and regulatory framework for permitting U.S. users of space segment capacity to access satellites licensed by other countries, *i.e.*, non-U.S. space segment. Consistent with the Commission's articulated desire to "provide U.S. customers with the widest possible range of service options"[8] and the Commission's stated U.S. satellite policy objective "to foster the greatest possible availability of efficient and innovative satellite communications services"[9], Newcomb and Mobile Datacom believe that the ability of U.S. users to access the maximum number of satellite systems worldwide, assuming no resulting adverse effect on U.S. licensees, will achieve these goals. Newcomb and Mobile Datacom face real-time space segment capacity needs for which the widest range of options to meet these needs is desired. Only then can the most efficient and effective space segment solution for their services be determined. As a result, Newcomb and Mobile Datacom will address below certain proposals raised in the *DISCO II NPRM* which directly relate to their ability to continue offering, on an uninterrupted basis, the valuable and highly demanded RDSS services which they currently provide.

II. In Addition To the "Eco-Sat" Test, The Commission Should Include An "Insufficient U.S. Capacity" Test As A Criteria For Evaluating Applications To Use Non-U.S. Space Segment Capacity

In proposing a regulatory framework for obtaining authorization to access non-U.S. space segment, the Commission has proposed a basic "Eco-Sat" analysis which focuses on "effective competitive opportunities" for U.S. satellites in the non-U.S. satellite's "home market" and, if

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[8]*DISCO II NPRM* at para 5.

[9]*Id.* at para 8.

applicable, route markets, from the U.S. to other countries.[10] This Eco-Sat test, in conjunction with technical and operational requirements as well as general consideration of other public interest factors such as foreign policy, national security, etc., purports to be the only basis upon which the Commission will consider future applications for accessing non-U.S. space segment. While Newcomb and Mobile Datacom believe the Eco-Sat framework may be appropriate for satellite services which are highly competitive in the U.S. market and for which sufficient U.S. licensed space segment capacity is available, it may not be a sufficient framework for services which are developing, have immediate requirements, or for which U.S. licensed satellite capacity is either insufficient, economically impractical or unavailable.[11]

For example, because Newcomb and Mobile Datacom must eventually transition their systems to space segment other than that currently used[12] it is necessary for them to have access to alternative space segment capacity which meets the needs of their systems, and permits an orderly transition for their users. Even if the ultimate desire of Newcomb and Mobile Datacom is to transition to a technically compatible U.S. licensed CDMA LEO MSS system, (assuming such a system licensee was willing to provide capacity) such a system may not be

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[10]*DISCO II NPRM* at para 18.

[11]Because the Commission has discretion as to whether MSS or FSS satellite systems are treated as common carrier systems (*see* Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC § 153(44)), it is conceivable that U.S. satellite capacity may exist, but be unavailable to certain users because the licensees refuse to provide services to them or offer to provide it only at exorbitant, uneconomical rates.

[12]This eventual transition requirement is driven by a number of factors: 1) the interim nature of their existing licenses which, unless modified by a showing of non-interference, may require transition as soon as early next year; 2) the fact that the current GSO FSS satellites containing the L-Band payloads have a finite in-orbit life, and there are no plans to replace them with new payloads in an appropriate timeframe.

fully operational within the time frame required by Newcomb and Mobile Datacom to transition their systems.[13] If a technically compatible non-U.S. satellite system were available which had the capacity to support the continued provision of Newcomb's and Mobile Datacom's packetized data messaging and position location services, then the non-availability of U.S. capacity should be the overriding factor in considering an application to access that capacity regardless of whether or not the Eco-Sat test is met. In such a case, use of the non-U.S. satellite would serve the public interest in the United States because otherwise the U.S. public may be prevented from receiving the service at all. Moreover, it would not adversely impact U.S. licensees because either none would be operational, or if operational, the decision to make capacity unavailable to Newcomb or Mobile Datacom would be of their own choosing. Of course, Newcomb and Mobile Datacom recognize that technical issues of interference and coordination, as well as overriding U.S. public policy factors must be considered even when applying an "Insufficient U.S. capacity" test.

The adoption of this additional test for considering those applications where licensed U.S. capacity is insufficient or unavailable to meet the applicant's needs would appear to provide incentives to U.S. licensees to construct and operate their authorized systems as rapidly as possible as well as to negotiate fairly and in good faith with U.S. users who seek to obtain their capacity. Authority to access non-U.S. space segments on this basis could be conditioned by the FCC on the fact that once U.S. licensed capacity for the same service became available, then

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[13]The Newcomb and MDC "interim" authorizations suggest that Newcomb and MDC must cease current operations when a "regularly licensed MSS/RDSS provider in the 1610-1626.5 MHz band launches its first satellite." *See, e.g., Newcomb Mod Order* at para 13(a) (emphasis added). A single or even a few MSS LEO satellites will not result in a fully operational system.

the ECO-Sat framework would govern for continued use of that non-U.S. capacity by a U.S. service provider. Newcomb and Mobile Datacom believe this approach would provide additional incentives to other administrations to retain U.S. users of their space segment capacity through providing competitive opportunities to U.S. satellite licensees.

Newcomb and Mobile Datacom submit that only through adopting this additional criteria, *i.e.*, "Insufficient U.S. capacity" test, to be used in lieu of the Eco-Sat test in those cases where the applicant can demonstrate insufficient or unavailable U.S. licensed capacity for the particular service it seeks to provide, will the Commission's policy objectives of "the greatest possible availability of efficient and innovative satellite communication services for users in the United States"[14] be realized.

III. The Commission's Identification Of Appropriate Service Categories For Authorizing Non-U.S. Space Segment Use Does Not Consider Significant Differences Within Particular Services Included In These Categories

In seeking to apply its Eco-Sat test to a particular country for determining whether that country meets the test, the Commission recognizes that certain countries may distinguish between the different types of satellite services permitted to be offered by U.S. licensed systems. In order to avoid a situation where a country may permit access for one type of service but not another, the Commission has proposed three broad categories of service for consideration, *i.e.*, DTH (direct-to-home) FSS and MSS. The low-data-rate packetized mobile data and position location RDSS services offered by Newcomb and Mobile Datacom would fall within the broad umbrella of "MSS" services which also include the "Big LEO" type high-data rate MSS services.

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[14]*DISCO II NPRM* at para 8.

These high-data rate MSS services, as well as those of AMSC, are connected to the public switched network (PSN) for full end-to-end connectivity of all users and thus may compete with traditional land-line services in other countries.

Including these very different and discreet types of "mobile" services within the same general MSS service category for application of the Eco-Sat test (as well as the Newcomb and Mobile Datacom proposed "Insufficient U.S. capacity") test may unnecessarily and inequitably prevent certain U.S. mobile satellite services from gaining access to needed non-U.S. space segment. This is particularly true for U.S. systems whose "MSS" services will not be interconnected with another country's PSN and which do not present real or perceived threats to that country's traditional communications services

Historically, non-U.S. administrations have been slow to permit access to their PSN's for either domestic (other than a government owned entity) or non-domestic entities for both voice and data switched services. Entities seeking operating authority for private line data services have fared better. Authority to provide non-switched or private data services has as a rule been granted more readily, particularly when the entrenched national carrier has concentrated on switched voice service, and the local business community has called for a means to access alternative non-switched data services. For the commercial user, an efficient data communications capability is essential in today's global business environment, and oftentimes it has been other than the entrenched carrier who has offered up such a service along with the investment to install the necessary infrastructure

Newcomb and Mobile Datacom fear that a considerable delay in resolving all the related issues and adopting ultimate standards for applying the Eco-Sat test to a very broad based MSS

category, particularly issues associated with the "critical mass" approach[15] will frustrate the ability of RDSS-type MSS service providers to demonstrate satisfaction of the Eco-Sat test for their discreet subset of MSS services for which other countries may more readily and quickly grant access to U.S. licensed systems. In addition, because U.S. licensed MSS systems providing both switched and non-switched MSS services will be most eager to gain access to other countries for the global interconnected voice and data service applications, Newcomb and Mobile Datacom are concerned that U.S. licensees like the Big LEO's will focus their early efforts on access issues related primarily to these services as a priority, and not attempt initially to secure access for the non-switched RDSS type services provided by Newcomb and Mobile Datacom. Service providers like Newcomb and Mobile Datacom who offer only non-switched MSS data services believe they would be in a better position to secure access arrangements with other countries for those portions of any U.S. satellite systems which they may be using for their particular type of MSS service to deliver packet data services to other parts of the world. This is so because the interest in tracking assets on a global basis, for example, from factory to customer, is growing. Tracking of the movement of goods and material is of critical interest not only to the commercial sector but to elements of the U.S. government as well, which are investing considerable sums in an attempt to establish a capability for total asset visibility. If past experience is any indicator, it will be easier and faster for U.S. systems to negotiate competitive access agreements for mobile packet data services than for mobile switched services. Newcomb and Mobile Datacom are committed to take an active role in this process.

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[15]*DISCO II NPRM* at para. 47.

In addition to the above-noted concerns about the "lumping" of all types of MSS services into one category for purposes of applying the Eco-Sat test or even an "Insufficient U.S. capacity" test may have significant adverse impact on the ability of Newcomb and Mobile Datacom to provide service continuity to their existing customers in the event they must cease using their existing space segment pursuant to the current terms of their interim licenses. In the event the Commission does not adopt some form of the "Insufficient U.S. capacity" test and capacity on a Big LEO or other operationally compatible U.S. licensed system was not available to Newcomb or Mobile Datacom, the ability of Newcomb and Mobile Datacom to meet the Eco-Sat test with respect to a particular desired non-U.S. satellite system may be intricately tied to access arrangements involving U.S. licensed MSS systems for MSS services involving switched voice and data, effectively leaving Newcomb and Mobile Datacom without space segment capacity to continue providing service to their numerous customers.

As a result, Newcomb and Mobile Datacom request that the Commission consider subdividing the MSS service category into two subcategories, *i.e.*, one for RDSS services like packet data messaging and position location services which do not involve switched interconnection or voice applications and one for those MSS services which contemplate global interconnected voice and data services for purposes of meeting Eco-Sat test showings. Newcomb and Mobile Datacom submit this subdivided category of MSS service should also be considered in determining whether the "Insufficient U.S. capacity" test has been met. Applying a bifurcated MSS service classification for both of these tests will permit the Commission to consider the uniquely different applications which these MSS service offerings support, and to consider the different marketplace and policy issues, both domestically and abroad, facing these services.

If the Commission fails to subdivide the MSS category as proposed above, Newcomb and Mobile Datacom propose that the Commission consider an interim authorization process, to permit non-U.S. systems to be accessed for non-switched MSS services while the necessary accords are being obtained from other countries' administrations to meet the Eco-Sat test. This probationary period would end when the test was met, or alternatively at a date fixed at which time service over the non-U.S. system would have to cease. This would permit necessary MSS services to continue or commence, as the case might be, in anticipation of achieving a positive outcome in the Eco-Sat evaluation. The companies involved, system owners, and service providers, both domestic and abroad, would have an even greater incentive under these conditions to insure that appropriate access was established for U.S. MSS systems in the countries necessary to achieve the specified threshold of effective competitive opportunities.

IV. Conclusion

In conclusion, Newcomb and Mobile Datacom fully support the efforts of the Commission to create a regulatory framework to govern the ability of U.S. earth station licensees to access non-U.S. space segment for the provision of service in the United States, and between the U.S. and foreign points. This issue is one of critical importance to Newcomb and Mobile Datacom at the present time as they are considering all the space segment alternatives available to them for the provision of continuous uninterrupted service to their customers as they transition ultimately to their second generation mobile packet data and position location systems. In developing policy and ultimately adopting rules to govern non-U.S. satellite use in the United States, Newcomb and Mobile Datacom urge the Commission to remain cognizant of the fact that unique situations may exist for certain U.S. service providers which may warrant case-by-case

treatment. The Newcomb and Mobile Datacom situation may well prove to be such a case. As a result, Newcomb and Mobile Datacom respectfully request that the Commission adopt as an additional non-U.S. satellite use test an "Insufficient U.S. Capacity" test which may be applied in a situation where U.S. licensed space segment capacity may not be available. Furthermore, Newcomb and Mobile Datacom submit that the differences between low-data-rate packet data and position location services *vis-a-vis* other MSS services designed specifically for voice applications warrant a separate service category classification for regulatory considerations.

Wherefore, in view of the foregoing, Newcomb and Mobile Datacom request that the Commission consider the issues raised in these comments in developing its final rules in this proceeding.

Respectfully submitted,

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MOBILE DATACOM CORPORATION

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